

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODNEY BERNARD BARNO,

Plaintiff,

v.

ARMANDO PADILLA, et al.,

Defendants.

Case No. [20-cv-03886-SI](#) (pr)

**ORDER SETTING NEW DEADLINES
AND DENYING REQUEST FOR
COUNSEL**

Re: Dkt. Nos. 36, 37

Plaintiff has requested a second extension of the deadline to file his opposition to defendants' motion for summary judgment. Docket No. 37. Plaintiff asserts that he needs more time to file his opposition to defendants' motion because he has limited access to the law library, which was closed "due to the holidays (Christmas and New Year[']s)." *Id.* at 1. Upon due consideration, the request for a 14-day extension is GRANTED. The court now sets the following new briefing schedule on defendants' motion for summary judgment: Plaintiff must file and serve his opposition no later than **January 21, 2022**. Defendants must file and serve their reply, if any, no later than **February 4, 2022**. No further extensions of these deadlines should be expected.

Plaintiff has also requested that counsel be appointed to represent him in this action. A district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together before deciding on a request for counsel under § 1915(e)(1). Exceptional circumstances are not present here. The facts giving rise to the complaint are rather simple and the legal claims appear

straightforward. Additionally, plaintiff has been able to adequately articulate his claims *pro se*. The request for appointment of counsel is DENIED. Docket No. 36.

IT IS SO ORDERED.

Dated: January 3, 2022



SUSAN ILLSTON
United States District Judge